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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. .....

In Re Application of FRE LE POOLE GRIFFITHS, for Admission to the Bar

Appellant.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

JURISDICTIONAL STATEMENT

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INDEX

PAGE

Opinion Below 1

Jurisdiction 2

Statutes Involved 2

Questions Presented 2

Statement of the Case 3

The Questions Are Substantial

I. Superior Court Rule 8(1), which bars aliens from the practice of law, is "inherently suspect" and is a denial of the equal protection of the laws 6

(a) The "officer of the court" rationale 8

(b) Attorneys as "Commissioners of the Superior Court" 9

(c) The requirement of "loyalty and allegiance to the state" and "adherence to its political and judicial system" 10

II. Superior Court Rule 8(1) infringes upon the Federal power over immigration 12

III. Superior Court Rule 8(1) violates the First Amendment by burdening Appellant's right, recognized in international law and public policy, freely to determine her own nationality 14

CONCLUSION 16

PAGE

APPENDIX

Decision and Judgment of the Superior Court—New Haven County 17

Opinion of the Connecticut Supreme Court 22

Judgment of the Connecticut Supreme Court 40

Notice of Appeal Filed With the Connecticut Supreme Court 41

Constitutional, Statutory and Regulatory Material 43

TABLE OF AUTHORITIES

Cases:

Application of Park, 484 P.2d 690 (Alaska 1971) 8

Application of Skonsen, 79 Ariz. 325, 289 P.2d 406 (1955) 8

Astrup v. Immigration and Naturalization Service, 402 U.S. 509 (1971) 10

Baird v. Arizona, 401 U.S. 1 (1971) 11

Bradwell v. Illinois, 83 U.S. 442, 16 Wall. 130 (1872) 8

Dougall v. Sugarman, —— F. Supp. ——, 40 Law Week 2304, 4 CCH EMPL. PRAC. DEC. §7568 (S.D.N.Y. 1971), *appeal filed,* 40 U.S. Law Week 3485 .....7, 9, 11, 14

Ex Parte Thompson, 10 N.C. 355 (1824) 8

Flemming v. Nestor, 363 U.S. 603 (1960) 15

Graham v. Richardson, 403 U.S. 365, 29 L. Ed.2d 534 (1971) 6-7, 8, 12, 13

PAGE

In Re Gault, 387 U.S. 1 (1967) 2
In Re Stollar, 401 U.S. 23 (1971) 11

Jalil v. Hampton, —— F.2d —— (D.C. Cir. No. 24,640, 3/8/72) 7

Large v. State Bar of California, 218 Cal. 334, 23 P.2d 288 (1933) 8
Lathrop v. Donohue, 367 U.S. 820 (1961) 2
Law Student's Civil Rights Research Council v. Wadmond, 401 U.S. 154 (1971) 11

Petition of Rocafort, 186 So.2d 496 (Fla. 1966) 8
Purdy v. Fitzpatrick v. California, 71 Cal.2d 566 (1969) 14

Shapiro v. Thompson, 394 U.S. 618 (1969) 16
Sherbert v. Verner, 374 U.S. 398 (1963) 15
Speiser v. Randall, 357 U.S. 513 (1958) 16

Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948) 13
Teitcheid v. Leopold, —— F. Supp. ——, 4 CCH EMPL. PRAC. DEC. §7561 (D. Vt. 1971) 7, 14
Truax v. Raich, 239 U.S. 33 (1915) 13

West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943) 15

Younus v. Shabat, 336 F. Supp. 1137 (N.D. Ill. 1971) 7

Van Ginkel v. Supreme Court of the State of New York, Appellate Division, No. 72 Civ. 1331 (S.D. N.Y.) 8

PAGE

Constitutional Provisions:

United States Constitution

Article I, Section 2 9

Article I, Section 3 9

Article I, Section 6 9

Article II, Section 1 9

First Amendment 2, 6, 14, 16

Statutes:

8 U.S.C. §1101(32) 14

§1151(a) 13

§1153 13

§1182(a)(4) 14

§1427(f) 3

§1430(a) 3

10 U.S.C. §502 10

§510(b)(1) 10

28 U.S.C. §1257(2) 2

Connecticut Practice Book, Section 8 ..... 2, 4, 5, 6, 7, 12, 13, 14, 15, 16

Regulation:

29 C.F.R. pt. 60.2(a), Schedule A, Group 1 (1969) 14

PAGE

Other Authorities:

Alien Lawyers in the United States and Japan: A Comparative Study, 39 Wash. L. Rev. 412 (1964) 6, 8

Art. I, 1957 United Nations Convention on the Nationality of Married Women 14

Art. 5, 1967 Declaration on the Elimination of Discrimination Against Women 15

Art. 15, Universal Declaration of Human Rights 14

Fisher and Nathanson, *Citizenship Requirements in Professional and Occupational Licensing in Illinois*, 45 Chi. Bar. Rec. 391 (1964) 9

Konvitz, *The Alien and Asiatic in American Law*, 188 (1946) 9

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Appellant.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Supreme Court of Connecticut, entered on February 15, 1972, denying appellant's petition for a decree that she be admitted to take the State Bar Examination and declared eligible for admission to the Bar of the State of Connecticut. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

Opinion Below

The Memorandum of Decision of the Superior Court, New Haven County, filed December 21, 1970, is not reported, and is set forth in the Appendix, *infra,* at pp. 17-21. The opinion of the Connecticut Supreme Court is reported at *Conn. Law Journal,* p. 1, February 15, 1972, —— Conn. ——, excerpted at 40 Law Week 2566, and set forth in the Appendix, *infra,* at pp. 22-39.

Jurisdiction

The judgment of the Connecticut Supreme Court was entered on February 15, 1972, and notice of appeal was filed in that Court on February 22, 1972 (App., *infra*, pp. 40-42). The jurisdiction of the Supreme Court to review this decision by appeal is conferred by 28 U.S.C. Section 1257(2). The following decisions sustain the jurisdiction of this Court to review the judgment on appeal in this case: *Lathrop* v. *Donohue*, 367 U.S. 820 (1961); *In Re Gault*, 387 U.S. 1 (1967).

Statutes Involved

CONNECTICUT PRACTICE BOOK, Section 8, Qualification for Admission:

"First, that he is a citizen of the United States."

Questions Presented

1. Whether Superior Court Rule 8(1), which requires that an applicant for admission to the bar be a citizen of the United States, denies to appellant, a lawfully admitted resident alien, the equal protection of the laws.

2. Whether Rule 8(1) interferes with exclusive Federal power over immigration and naturalization, thus contravening the Supremacy Clause.

3. Whether Rule 8(1) as applied unconstitutionally burdens appellant's First Amendment right to determine her nationality as guaranteed by international public policy.

Statement of the Case*

The Appellant is an applicant for admission to the bar. She is a resident and taxpayer of New Haven and has complied with all the conditions and requirements for admission to take the bar examinations except that she is not a citizen of the United States. Although she could easily become a citizen of the United States by reason of her marriage to a United States citizen, she has elected to remain a citizen of the Netherlands and has not filed and does not intend to file a declaration of intent to become a citizen of this country. 8 U.S.C. §§1427(f), 1430(a). She filed with the clerk of the Superior Court an application for admission to the bar and the standing committee on recommendations for admission to the bar of New Haven County recommended to the bar of that county that her application be denied as she was not a citizen and thus failed to meet the requirements of the rules of the Superior Court for admission as an attorney. At a meeting of the bar of New Haven County, the report of the standing committee on recommendations for admission to the bar was presented and the members of the bar voted to accept the report of the committee denying her application. She thereupon petitioned the Superior Court for New Haven County for a decree that she be permitted to take the examination as a candidate for the bar and that she be declared eligible for such admission. Her petition was denied on the ground that she did not meet the necessary qualification of being a citizen of the United States which is the

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* The statement of the case is taken verbatim from the Opinion of the Supreme Court of Connecticut, App., *infra*, pp. 22-24, except for the minor modifications necessary to properly identify the parties.

first requirement provided by §8 of the rules of the Superior Court governing admission to the Connecticut bar. Practice Book §8(1).

From this judgment the Appellant appealed to the Supreme Court of Connecticut. Her assignment of errors claimed that the court erred in not declaring §8(1) of the Practice Book to be unconstitutional; in not exercising its inherent power to waive the provisions of §8(1), in order to avoid injustice to the petitioner and in overruling the several claims of law which she made as follows: "a. Rule 8(1) of the Superior Court Rules discriminates unreasonably against aliens situated as is the petitioner, depriving them thereby of their Constitutional Right to equal protection of the law; b. All forms of discrimination against aliens are presumed invalid unless the State shows an overwhelming or compelling interest in maintaining discrimination. c. Superior Court Rule 8(1) interferes with the Federal power over immigration. d. Superior Court Rule 8(1) as applied to the petitioner violates international public policy and the First Amendment of the United States Constitution by burdening petitioner's right freely to determine her nationality. e. Superior Court Rule 8(1) creates an unreasonable and arbitrary classification without rational relation to the petitioner's fitness or capacity to practice law. f. Superior Court Rule 8(1) violates equal protection in that it treads upon fundamental personal rights without satisfying the more stringent tests established for such regulations. g. Superior Court Rule 8(1) does not promote a compelling governmental interest. h. Superior Court Rule 8(1) imposes an impermissible burden upon interstate travel."

The Supreme Court of Connecticut overruled the Appellant's assignment of errors and upheld the constitutionality of Rule 8(1). With regard to Appellant's equal protection claim, that court held:

> In our opinion, there is clearly a rational connection between a requirement of loyalty and allegiance to the state, with the concomitant adherence to its political and judicial system, and the exercise of those powers, participation in the state's judicial branch of government, and membership in what Mr. Justice Harlan of the United States Supreme Court has referred to as "a profession in whose hands so largely lies the safekeeping of this country's legal and political institutions." *Konigsberg* v. *State Bar of California,* 366 U.S. 36, 52, 81 S. Ct. 997, 6 L. Ed. 2d 105. We deem it entirely reasonable that the Superior Court as a constitutional court requires that persons, to be admitted to assist the court in the administration of justice and the laws of the state, be citizens and not owe their primary allegiance to a foreign power. App., *infra,* p. 31.

In reaching this conclusion, the court also ruled that even though any discrimination against aliens is "inherently suspect," Rule 8(1) is justified because "the requirement of citizenship is not simply reasonable but is basic to the maintenance of a viable system of dispensing justice under our form of government." App., *infra,* pp. 33-34.

With regard to Appellant's claim that Rule 8(1) interfered with federal power over immigration, the court said:

> The intent of Section 8(1) is clearly neither to insure economic success for citizens as opposed to aliens

> nor to discourage aliens from settling within the jurisdiction. Rather, it was intended to serve a greater need than mere financial success for a selected class. We are persuaded that the rule is neither inconsistent with nor repugnant to the power over immigration conferred on Congress by article first Section 8 of the constitution of the United States. App., *infra*, p. 37.

Finally, the court rejected the Appellant's claim that Rule 8(1) violated her First Amendment right, recognized in international law, freely to determine her own nationality.

THE QUESTIONS ARE SUBSTANTIAL

I.

Superior Court Rule 8(1), which bars aliens from the practice of law, is "inherently suspect" and is a denial of the equal protection of the laws.

By court rule, Connecticut classifies applicants for admission to the bar into two categories: citizens and aliens. Citizens are eligible for admission; aliens are not. The majority of states similarly require United States citizenship as a precondition of eligibility for the practice of law. See, *Alien Lawyers in the United States and Japan: A Comparative Study*, 39 Wash. L. Rev. 412 (1964). Such rules deny the equal protection of the laws to lawful resident aliens like the Appellant.

Just last Term, this Court unanimously reaffirmed the principle that " . . . classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny." *Graham* v. *Rich-*

ardson, 403 U.S. 365, 29 L. Ed.2d 534, 541 (1971). In *Graham* this Court invalidated, as a violation of the Equal Protection Clause, statutory arrangements which conditioned eligibility for welfare benefits on United States citizenship or on extended residence in the state. The Court rejected the states' claim that these laws advanced any "special public interest," holding instead that any such disqualifications based on alienage must, at the very least, be shown to advance compelling state interests, or else they must fall.[1]

Following *Graham,* several federal courts have invalidated statutes which excluded aliens from eligibility for employment in the civil service. See, *Dougall* v. *Sugarman,* —— F. Supp. ——, 40 Law Week 2304, 4 CCH EMPL. PRAC. DEC. §7568 (S.D.N.Y. 1971, 3 judge court), *appeal filed,* 40 U.S. Law Week 3485; *Teitcheid* v. *Leopold,* —— F. Supp. ——, 4 CCH EMPL. PRAC. DEC. §7561 (D. Vt. 1971) (holding that in light of *Graham,* the question did not even require the convening of a three-judge court); *Younus* v. *Shabat,* 336 F. Supp. 1137 (N.D. Ill. 1971) (holding that a state college cannot deny tenure to an otherwise qualified resident alien); cf., *Jalil* v. *Hampton,* —— F.2d —— (D.C. Cir. No. 24,640, 3/8/72) (involving the ban on employing aliens in the federal civil service). Rule 8(1), like these statutes, advances no compelling State interest.

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[1] Although the court below concluded that the citizenship requirement did advance compelling interests, within the meaning of *Graham,* the reference to *Graham* was an afterthought. The bulk of the court's discussion of the equal protection issue is addressed to the conclusion that the citizenship requirement is "reasonable." App., *infra,* pp. 29-33.

The court below concluded that "the requirement of citizenship . . . is basic to the maintenance of a viable system of dispensing justice under our form of government."[2] App., *infra*, p. 34. None of the three reasons offered to justify this conclusion can pass muster under the strict judicial scrutiny test set forth in *Graham* v. *Richardson*.[3]

(a) *The "officer of the court" rationale.*

Connecticut argues that attorneys are officers of the court, creating a dual trust which imposes upon them a duty to act with fidelity both to the court and to their clients. To be sure, a state has a substantial interest in

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[2] That sweeping conclusion was based upon no evidence whatsoever. The respondents below never even claimed that confidence and respect in the judicial system required that all mmbers of the bar be citizens. Indeed, since approximately 10 states allow noncitizens to practice, see *Alien Lawyers: A Comparative Study*, *supra*, it is doubtful that such a showing could be made. In fact, a century ago, as this Court observed, it was commonplace for aliens to practice law in the United States: "Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State." *Bradwell* v. *Illinois*, 83 U.S. 442, 16 Wall. 130, 139 (1872).

[3] The court cited four other state court decisions which upheld citizenship as a requirement of admission to practice law. *Ex Parte Thompson*, 10 N.C. 355 (1824); *Large* v. *State Bar of California*, 218 Cal. 334, 23 P.2d 288 (1933); *Petition of Rocafort*, 186 So.2d 496 (Fla. 1966); *Application of Skonsen*, 79 Ariz. 325, 289 P.2d 406 (1955). But all were decided prior to *Graham*, rendering their precedential value dubious.

A fifth, recent case, *Application of Park*, 484 P.2d 690 (Alaska 1971), invalidated the citizenship requirement, and indicated that a resident alien who could honestly take an oath to support the United States Constitution could not be barred from the practice of law. In *Park* the Alaska Supreme Court noted that there is a significant amount of legislative and judicial activity with regard to this issue and that many states are reconsidering their exclusion of aliens from the practice of law. Indeed, a lawsuit was recently filed challenging New York's citizenship requirement. See, *Van Ginkel* v. *Supreme Court of the State of New York, Appellate Division*, No. 72 Civ. 1331 (S.D.N.Y.).

securing a high level of professional conduct. But there is no connection between a requirement of citizenship and the advancement of these valid interests. See generally, Konvitz, *The Alien and Asiatic in American Law,* 188 (1946); Fisher and Nathanson, *Citizenship Requirements in Professional and Occupational Licensing in Illinois,* 45 Chi. Bar. Rec. 391 (1964). Reliance on the talismanic concept that a lawyer is an "officer of the court" is insufficient. An attorney is not an "officer" in the same sense as a public official.[4] Moreover, even if attorneys can be considered public officers, recent cases have held that the state advances no compelling interest by excluding aliens from the public service. See, e.g., *Dougall* v. *Sugarman, supra.* Thus, whatever is meant by referring to lawyers as "officers of the court" the blanket exclusion of aliens from eligibility cannot be sustained on that ground, particularly since several states do allow non-citizens to be admitted to practice. See footnote 2, *supra.*[5]

(b) *Attorneys as "Commissioners of the Superior Court."*

In Connecticut, attorneys are deemed Commissioners of the Superior Court and given additional powers to issue process, sign writs and administer oaths. The court below relied heavily on these powers as an additional justifica-

[4] Article I, Section 6 of the United States Constitution provides that "no Person holding any Office under the United States" shall be a member of Congress. It has never been suggested that attorneys, particularly those admitted to practice in Federal courts, were thereby barred from serving in the Congress.

[5] Interestingly, counsel have been unable to find any provision in the federal statutes which specifically requires that United States judges be either lawyers or citizens. Of course, the Constitution requires that members of the House (Article 1, Section 2), and Senate (Article 1, Section 3) and the President (Article II, Section 1) be citizens of the United States.

tion for requiring United States citizenship as a precondition to practice law. But, again, there is no demonstration of any relationship between the proper exercise of these powers and the requirement of citizenship. There is no guarantee that a citizen is any less likely to abuse this authority than an alien. As to any attorney who does so, there are appropriate remedies by way of discipline or disbarment to deal with the problem.

(c) *The requirement of "loyalty and allegiance to the state" and "adherence to its political and judicial system."*

The gravaman of the decision below is that a state may require fealty to it as the precondition for admission to its bar, and that non-citizens who "owe their primary allegiance to a foreign power" cannot meet that condition.

The Appellant stands ready to subscribe to an oath to uphold the Constitution and Laws of the United States and of Connecticut as well as to the Connecticut attorney's oath.[6] While the Connecticut Supreme Court did not find otherwise, it did seem to imply that aliens were inherently incapable of taking a constitutional oath in good faith. This argument is undermined by the fact that resident aliens may be subject to the draft, see *Astrup* v. *Immigration and Naturalization Service,* 402 U.S. 509 (1971) and are permitted to enlist in the Armed Forces, 10 U.S.C. Section 510(b)(1), which requires subscribing to an oath even more demanding than Connecticut's, see 10 U.S.C. Section 502.

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[6] Newly admitted members of the Connecticut bar take a public officers oath to support the federal and state constitutions and an attorney's oath which in effect requires an attorney to be honest and scrupulous. See App., *infra,* pp. 28, 44.

More importantly, the decision below, justifying the exclusion of aliens on the ground that their status bespeaks a lack of primary loyalty to or belief in the government or the state, contravenes the rulings in the trilogy of bar admission cases decided last Term. *Baird* v. *Arizona*, 401 U.S. 1 (1971); *In Re Stollar*, 401 U.S. 23 (1971); *Law Student's Civil Rights Research Council* v. *Wadmond*, 401 U.S. 154 (1971). In those cases, this Court defined a very narrow area of legitimate inquiry into the political beliefs and loyalties of applicants to the bar, limited to insuring that an applicant has "the qualities of character and the professional competence requisite to the practice of law." *Baird* v. *Arizona, supra* at 7.

And only two kinds of political inquiries may legitimately be made by the state: (1) whether the applicant has been a knowing member of an organization advocating the overthrow of the Government by force or violence and shared the intent to further the organization's illegal goals, and (2) whether the applicant can in good faith take an oath to uphold the Constitution. In fact, New York's requirement that the applicant "believes in the form of the government of the United States and is loyal to such government" was upheld solely because it had been construed to require only a good faith willingness to swear to uphold the Constitution. *Law Students Civil Rights Research Council* v. *Wadmond, supra* at 162-63. Accordingly, an alien's "primary allegiance to a foreign power" is, by itself, a constitutionally impermissible basis for denying admission to the bar.[7] The require-

[7] In *Dougall* v. *Sugarman, supra*, the court specifically rejected the state's contention that it could exclude aliens from the civil service because the government is entitled to conduct its affairs through persons who have undivided loyalty. The court found no

ment of citizenship is far too broad a means of implementing a goal which can be achieved by narrowly prescribed criteria governing admission to the bar.

In sum, none of these justifications offered to support the "inherently suspect" discrimination against aliens contained in Rule 8(1) can be sustained.

II.

Superior Court Rule 8(1) infringes upon the Federal power over immigration.

In *Graham* v. *Richardson*, this Court held that statutes which discriminated against aliens in the distribution of welfare benefits not only denied them the equal protection of the laws but also contravened the federal government's "broad constitutional powers" over aliens. 29 L. Ed.2d at 544. In so ruling, this Court reaffirmed a principle dating back a half century:

> The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting* v. *United States*, 149 U.S. 698, 713 . . . The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority

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connection between the requirement of loyalty to the government and any compelling state interest. This argument would apply *a fortiori* to the case of private attorneys.

of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality. *Truax* v. *Raich*, 239 U.S. 33, 42 (1915). See also, *Takahashi* v. *Fish and Game Commission*, 334 U.S. 410 (1948).

In *Graham* this Court identified, as part of a "comprehensive" Congressional plan for the regulation of immigration and naturalization, an overriding national policy to provide economic security for lawfully admitted aliens and to allow them freely to travel and take up abode in the various States. Since the statutes in question were inconsistent with those federal policies, they encroached upon "exclusive federal power" and were constitutionally impermissible.

The court below held *Graham* inapplicable on the theory that Rule 8(1) involved only an indirect and remote interference with national immigration policy. But Rule 8(1) interferes with two other overriding federal policies, parallel to those identified in *Graham*.

First, the Rule burdens the general congressional power to admit aliens to lawful residency and livelihood in the United States. *Truax* v. *Raich, supra; Takahaski* v. *Fish and Game Commission, supra.*

Second, Rule 8(1) is at odds with a specific, federal regulatory scheme enacted by Congress in 1965. That arrangement establishes categories of priorities for the annual admission of aliens. 8 U.S.C. Sections 1151(a), 1153. The second preferential category consists of "qualified immigrants who are members of the professions . . . ",

which is specifically defined to include "lawyers" 8 U.S.C. Section 1101(32).[8] Accordingly, it is specific national policy to encourage the immigration of persons like the Appellant who have received advanced professional training. The effect of Rule 8(1) is in conflict with this federal policy, thus contravening exclusive federal control over immigration and thereby infringing the Supremacy Clause. See *Purdy* v. *Fitzpatrick* v. *California*, 71 Cal.2d 566 (1969); *Dougall* v. *Sugarman, supra* (invalidating, on preemption grounds, a statutory exclusion of aliens from eligibility for the civil service); *Teitcheid* v. *Leopold, supra* (same).

III.

Superior Court Rule 8(1) violates the First Amendment by burdening Appellant's right, recognized in international law and public policy, freely to determine her own nationality.

One of the most important, emerging principles of international law is that the individual should have the right to freely determine his or her nationality. See Article 15, Universal Declaration of Human Rights. That principle is particularly important with regard to women like Appellant who have husbands whose nationality differs from their own, because of the tendencies to require them to adopt their husband's nationality. See, Art. I, 1957 United Nations Convention on the Nationality of Married Women.

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[8] However, the statute withholds such preferential immigration unless the Secretary of Labor has certified that there would not be an adverse effect on American labor. 8 U.S.C. Section 1182(a)(4). The Secretary of Labor has certified that the preferential admission of aliens with advanced degrees will not have such an adverse effect. 29 C.F.R. pt. 60.2(a), Schedule A, Group 1 (1969), App., *infra*, pp. 45-47.

In fact, several International Conventions have sought to safeguard the right of women married to a husband with a nationality different from their own to retain their own nationality, if they choose to, and their right not to be discriminated against as a result of such a choice:

> Women shall have the same right as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing on her the nationality of her husband. Art. 5, 1967 Declaration on the Elimination of Discrimination against Women.

Plainly it is a complete frustration of such international law and policy to force a woman to give up her profession in order to exercise the fundamental right to retain her nationality.

The policies underlying these principles have a close analogy in United States constitutional law, which recognizes that an individual must be free to determine what acts of fundamental allegiance he chooses to engage in. *West Virginia Board of Education* v. *Barnette,* 319 U.S. 624 (1943).

Rule 8(1), as applied to Appellant, clearly, albeit indirectly, imposes a severe burden on her right of free choice in matters of fundamental allegiance. For either she has to give up her nationality, or she cannot be admitted to the Connecticut Bar. And this Court has long held that even such indirect interference with fundamental rights cannot be accomplished where compelling state interests are not advanced. *Sherbert* v. *Verner,* 374 U.S. 398 (1963); *Flemming* v. *Nestor,* 363 U.S. 603 (1960);

Speiser v. *Randall*, 357 U.S. 513 (1958); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969).

Consequently, Rule 8(1) is inconsistent with international public policy and with the First Amendment of the United States Constitution, in that if applied to Appellant it would necessarily operate to coerce her into giving up her nationality and engaging in an act of allegiance—in order to secure the benefit of the equally fundamental right to practice her profession.

CONCLUSION

For the reasons set forth above, jurisdiction should be noted.

Respectfully submitted,

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